

MOBIL OIL CORP.

IBLA 78-138

Decided June 23, 1978

Appeal from decision of the Arizona State Office, Bureau of Land Management, canceling in full or in part oil and gas leases A 10078-A 10088, A 10090, A 10091, and A 10093-A 10095.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Rules of Practice:  
Appeals: Effect of

Where BLM issues a decision requiring that an oil and gas offeror submit additional advance rental within 30 days, and the offeror files a timely appeal to this Board, the running of the 30 days is suspended. Following affirmation by this Board of BLM's decision, the offeror is properly given the entire 30 days within which to submit the additional rental.

2. Oil and Gas Leases: Generally

An oil and gas lease is "issued" on the day it is signed by the authorized officer of the Department of the Interior, although it is not effective, per 43 CFR 3110.1-2, until the first day of the month following its date of issuance.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:  
Rentals

An oil and gas offer which is accompanied by advance rental of \$0.50 per acre may not be rejected as not including sufficient advance rental, per 43 CFR 3103.3-2, 3111.1-1(d) and (e)(1), if the regulation raising the rental to \$1 is not in effect when the offer was filed.

APPEARANCES: R. B. Altman, Esq., Houston, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Mobil Oil Corp. appeals from the November 23, 1977, decision of the Arizona State Office of the Bureau of Land Management (BLM), which canceled oil and gas leases because they had been issued to it erroneously. We affirm.

On January 4, 1977, Murel G. Goodell filed over-the-counter noncompetitive oil and gas lease offers for lands in Arizona, submitting advance rental in the amount of \$0.50 per acre along with this offer. On February 11, 14, and 15, 1977, BLM notified Goodell that he would have to submit an additional \$0.50 per acre, as the annual rental for such oil and gas leases had been raised to \$1 per acre, effective February 1, 1977. On March 3, 1977, Goodell filed a timely notice of appeal of BLM's decision requiring this additional rental. This Board considered Goodell's appeal and affirmed BLM's decision requiring additional rental sub nom. Thomas G. Fails, 32 IBLA 302 (1977),

decided September 30, 1977. The administrative record was then returned to BLM.

While this matter was before us, on June 10, 1977, Mobil topfiled over-the-counter noncompetitive oil and gas lease offers covering all of the lands applied for by Goodell. Additionally, in these offers, Mobil applied for some lands not included in Goodell's offers.

On October 17, 1977, Goodell received notice of our rejection of his appeal in Fails, supra. On October 28, 1977, BLM, having received no payment of the additional \$0.50 per acre from Goodell, issued oil and gas leases to Mobil instead. On November 14, 1977, however, Goodell tendered the deficient rental to BLM, and on November 23, 1977, instituted a private contest against Mobil challenging the issuance of leases on these tracts to Mobil rather than to him. Also on November 23, 1977, BLM issued a decision canceling Mobil's leases insofar as they conflicted with Goodell's offer, so that it might grant them to him instead, from which decision Mobil has appealed, thereby mooting the contest.

[1] There is no doubt that BLM acted incorrectly by issuing the leases to Mobil on October 31, 1977, as, at this time, Goodell's senior offers were still extant. Under the terms of BLM's decisions of February 11, 14, and 15, 1977, Goodell had 30 days within which to pay the additional rental due. Under 43 CFR 4.21(a), the effect

of a decision by BLM is suspended when a timely notice of appeal is filed. Where, as here, a BLM decision requires a submission by a party within a prescribed period, the filing of the appeal suspends the running of the period, and, after this Board has issued its decision, the party is properly given the entire period in which to comply. Paul H. Sleeper, 22 IBLA 318 (1975); see David M. Miller, 15 IBLA 270 (1974). Thus, the 30-day period for compliance prescribed by BLM was suspended when Goodell appealed, and, when our decision was issued, he was entitled to a full 30 days to comply.

The record indicates, and appellant has noted, that Goodell did not receive notice of our decision in Fails, supra, until October 17, 1977. Goodell submitted the additional rental on November 14, 1977, within 30 days of his receipt of our decision, thus preserving the priority of his offers. We conclude that BLM should properly award the leases to him, all else being regular. 1/

Our holding in this matter is essential to a just resolution of the controversy. Under 43 CFR 4.410, Goodell had a right to appeal from BLM's decision, as it was adverse to his pecuniary interests. Under 43 CFR 4.21(a), the effect of a decision is suspended pending review by this Board. Suspending the effect of a decision on appeal insures that the status quo will be preserved while the affected

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1/ Accordingly, it is unnecessary for us to comment on the procedural propriety of a private contest in such circumstances.

party's rights are reviewed. If BLM's decision were given continued effect during review on appeal, his interest might irrevocably pass to an intervening party with inferior rights. It is true that Goodell could have avoided the problem by tendering the additional rental under protest while the matter was on appeal. However, nothing in the regulations required him to do so, and he should not be disqualified because he did not.

[2] Appellant argues that Goodell's offers were deficient and ought not to have been accepted by BLM, in that they were not accompanied by full payment of advance rental. Appellant maintains that, since Goodell's offers were filed in January 1977, under 43 CFR 3110.1-2, the leases could not have been effective any earlier than February 1, 1977, the date of the increase in annual rental, and that Goodell therefore should have submitted \$1 per acre as advance rental. As he submitted only \$0.50 per acre, appellant concludes, his offers were fatally defective, per 43 CFR 3103.3-1 and 3111.1-1(d) and (e)(1). We are not persuaded by this argument.

Under 43 CFR 3103.3-2, the increased annual rental of \$1 per acre applies to all leases issued on or after February 1, 1977, not effective on or after this date. An oil and gas lease is "issued" as of the date it is signed by the agent of the Government. For example, in the instant case, Mobil's lease A 10078 was issued (erroneously) on October 28, 1977, the date on which Mario L. Lopez

signed it on behalf of this Department. This fact is clear from the language on the lease form: "This lease for the lands described in item 3 above is hereby issued, subject to the provisions of the offer and on the reverse side hereof. THE UNITED STATES OF AMERICA[,] By [/s/] Mario L. Lopez, Chief, Branch of Lands and Minerals Operations[,] October 28, 1977." (Emphasis supplied.) This question was recently addressed in an opinion by Secretary Andrus, James W. Canon, 84 I.D. 176 (1977), which held that an oil and gas lease is not issued until it is signed by the authorized officer. Id. at 182. In so holding, the Secretary cited 43 CFR 3123.5(b) (1966), presently 43 CFR 3111.1-1(c), which provides that "[t]he United States will indicate \* \* \* the issuance of the lease by the signature of the appropriate officer thereof in the space provided."

Appellant has confused the date of issuance of an oil and gas lease with its effective date. Under 43 CFR 3110.1-2, leases are dated as of the first day of the month following the date of their issuance. This is done for the convenience of the Government in collecting annual rental and supervising the continued effectiveness of oil and gas leases. However, this effective date of the lease is not the same as the date of its issuance. Under the regulation, supra, the effective date of the lease may even be made retroactive to the first day of the month in which the lease issues.

[3] It was thus possible that BLM would "issue" these leases to Goodell prior to February 1, 1977, the effective date of the increased

annual rental, in which case, the annual rental would have been \$0.50 per acre. As there was still a chance, albeit a slim one, that BLM would issue leases pursuant to his offers prior to the date the higher rental came into effect, Goodell's advance rental was not deficient, and we cannot hold that he failed to submit adequate advance rental along with his offers. The amended regulation was not in effect when Goodell's offers were filed. Therefore, he was not in violation and his offers were acceptable at that time.

In summary, BLM's decisions of February 11, 14, and 15, 1977, requiring that Goodell submit additional advance rental in the amount of \$0.50 per acre within 30 days on pain of rejection of these offers, were suspended pending review of these decisions by this Board. When this Board issued its decision in Thomas G. Fails, *supra*, BLM's decisions were affirmed and their effect reinstated, and Goodell had 30 days within which to submit the rental or lose his priority to appellant, who had become a junior offeror by topfiling offers on these lands while the matter was on appeal. Appellant did submit the additional rental in a timely manner, and thereby preserved his priority. BLM mistakenly issued leases to appellant in derogation of Goodell's rights, and correctly canceled them on November 23, 1977.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Joan B. Thompson  
Administrative Judge

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Joseph W. Goss  
Administrative Judge



